



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF:**

**RICHARD BOOTH,**  
**Complainant,**

**and**

**BROOKS PRECISION, INC.,**  
**Respondent.**

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**CHARGE NO: 1999CF1185**  
**EEOC NO: 21B990405**  
**ALS NO: 10886**

**RECOMMENDED ORDER AND DECISION**

This matter is before me following a Recommended Liability Determination (RLD) issued on February 3, 2003, incorporated by reference herein. Pursuant to the RLD, Complainant filed a written petition for attorney's fees on February 21, 2003. Respondent filed a written response on March 7, 2003. An order was entered by the ALJ on April 8, 2003, giving Complainant until April 29, 2003 to file an affidavit from one of the attorneys involved in this matter. Complainant's counsel filed an affidavit on April 23, 2003. On May 13, 2003, Respondent filed an objection to the newly filed affidavit. This matter is ripe for decision.

**Contentions of the Parties**

Complainant requests the amount of \$58,176.00 in attorneys' fees for 323.20 hours of services at the hourly rate of \$180.00, for work performed over a four and one-half year period. Complainant further requests the amount of \$352.00 for expenses related to this matter. Respondent objects to Complainant's attorneys' fees request.

**Findings of Fact**

1. Michael Havrilesko is an attorney who has been practicing labor and employment law for 25 years. Mr. Havrilesko has maintained a private practice of law in Rockford, Illinois for over 20 years. Mr. Havrilesko has represented both plaintiff and defendants in employment discrimination cases.

2. Mr. Havrilesko began representing Complainant on July 31, 1998 and continued to represent him throughout the prosecution of this case with the assistance of Attorney David Rechenberg. The two attorneys devoted 323.20 hours combined in representing Complainant. Mr. Havrilesko charged Complainant the hourly rate of \$180.00.

3. David Rechenberg was the initial attorney for the Complainant and

performed legal services in this case from July 31, 1998 to May 30, 2000. During that period of time, Mr. Rechenberg had over twelve years of legal experience as a trial attorney. During the time period in question, Mr. Rechenberg had a customary hourly rate of \$180.00 an hour that he charged his clients.

4. Michael Havrilesko was the supervising attorney in this case. The initials for Mr. Havrilesko (MKH) was designated in the billing entries as the supervising attorney.

5. The amount of \$180.00 per hour for Attorneys Michael Havrilesko and David Rechenberg for the time period of 1998 to 2003 is adequately supported and reasonable.

6. Michael Havrilesko and David Rechenberg were successful on Complainant's claim presented to the Commission in this matter. They are entitled to attorneys' fees on the prevailing claim.

7. Complainant is entitled to the amount of \$58,176.00 in attorneys' fees for 323.20 hours of services at the hourly rate of \$180.00, for work performed over a four and one-half year period.

8. There is no need for an evidentiary hearing on the issue of attorneys' fees.

9. Complainant is entitled to pre-judgment interest for all damages and attorneys' fees/costs, as provided by the Act.

10. Complainant is not entitled to the requested amount of \$352.00 in costs.

### **Conclusions of Law**

1. A prevailing Complainant is entitled to reasonable attorney fees and necessary costs incurred to litigate this matter.

2. The party seeking attorneys' fees is required to provide evidence regarding the number of hours expended and the hourly rates, and Complainant has sufficiently done so.

3. Complainant is entitled to pre-judgment interest for all damages and attorneys' fees/costs, as provided by the Act.

4. The requested costs by Complainant in the amount of \$352.00 is not compensable.

### **Determination**

Complainant is entitled to the amount of \$58,176.00 in attorneys' fees for 323.20 hours of services at the hourly rate of \$180.00, for work performed over a four and one-half year period. Complainant is not entitled to the requested amount of \$352.00 in costs.

### **Discussion**

#### **Respondent's Request for Evidentiary Hearing:**

In Respondent's Response to Petition for Attorney's Fees and Costs and in its Objection to Affidavit of Attorney David N. Rechenberg, Respondent requests that an evidentiary hearing be held on the issue of attorneys' fees and that Complainant's attorneys be required to produce documentation pertaining to its billings record. Respondent did not contest the issue of whether Complainant was entitled to the billing entries submitted, but argued instead that the billings were not supported by documentation and requests that Complainant's counsel produce all documents referred to in Exhibit "A" of Complainant's Petition. Respondent's request is based upon the inconsistencies it found in the initials contained in the billings record.

Human Rights Commission Procedural Rule 5300.765, along with subsections 5300.765(e) and (f), respectively state that "The Administrative Law Judge may convene a hearing to resolve contested issues..." and "Following the submission of the petition for fees and/or costs and objections thereto and the completion of a hearing, if any,..." The language contained therein of the Commission Procedures reflects that the decision to hold an evidentiary hearing on an attorney's fees petition is a matter within the Administrative Law Judge's discretion.

In this instance, I do not feel that an evidentiary hearing is necessary. Complainant's counsel has made it clear that the initialed entry of DNR for 07/31/98 was that of Mr. Rechenberg, who first spoke with Complainant regarding his case. The following initialed entries of MKH were that of Mr. Havrilesko, who was the supervising attorney in the case. As the supervising attorney, Mr. Havrilesko initialed all subsequent entries for billing purposes. Complainant's counsel also made it clear that Mr. Havrilesko and Mr. Rechenberg worked on the case together until May of 2000 when Mr. Rechenberg left the firm. In addition, the two attorneys charged the same hourly rate fee. Therefore, I am denying Respondent's request for an evidentiary hearing on Complainant's Petition for Attorneys' Fees.

#### **Attorneys' Fees:**

After a finding of liability against the Respondents, the Complainant is entitled to reasonable attorneys' fees and costs incurred in litigating this matter. 775 ILCS 5/8A-104(G). The purpose of the fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. Clark and Champaign National Bank, Ill. HRC Rep. 193

(1982). In Clark, the Commission set forth guidelines to be considered in awarding attorneys' fees. Although the provision of the Act awarding attorneys' fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall for prevailing attorneys. York and Al-Par Liquors, Ill. HRC Rep. (1986CF0627), June 29, 1995. The burden of proof for requesting attorneys' fees rests with the Complainant.

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and previous awards of attorneys' fees to counsel. Clark and Champaign National Bank, *supra*.

Attorneys Michael J. Havrilesko and David N. Rechenberg are requesting an hourly rate of \$180.00 an hour for their work in this matter. Mr. Havrilesko submitted an affidavit stating that he has been charging his clients the hourly rate of \$180.00 since 1993. Mr. Havrilesko's affidavit also indicates that he had consulted with several plaintiff's attorneys with five to fifteen years of experience in Rockford who represent individuals in employment matters, and found that they customarily charge from \$175.00 to \$200.00 an hour. Mr. Rechenberg also submitted an affidavit in which he stated that his customary hourly rate during the time he represented the Complainant was \$180.00.

Complainant's Petition for Award of Attorneys' Fees shows that Attorneys Michael Havrilesko and David Rechenberg began representing the Complainant on July 31, 1998. Mr. Rechenberg left the firm in May of 2000, whereupon Mr. Havrilesko continued in his representation of the Complainant. The petition shows that Michael Havrilesko is an attorney who has been practicing labor and employment law for 25 years. Mr. Havrilesko has maintained a private practice of law in Rockford, Illinois for over 20 years, and Mr. Havrilesko has represented both plaintiff and defendants in employment discrimination cases. The petition further shows that Mr. Rechenberg had over twelve years of legal experience as a trial attorney.

Taking into consideration the actual hourly rates Mr. Havrilesko and Mr. Rechenberg charges along with their experience and the rates charged by other similar attorneys, I find that the rate of \$180.00 an hour for the time period of 1998 to present, to be adequately supported by documentation. As such, the available documentation shows that from the time period of 1998 to the present, Mr. Havrilesko and Mr. Rechenberg worked a total of 323.20 hours in this matter. Accordingly, Complainant is entitled to \$58,176.00 in attorneys' fees.

In regards to the claim for expenses, the petition shows requests for travel expenses, copies, charges for Federal Express, as well as for postage and the return of the transcript in this matter. It is well established that attorneys cannot be compensated for performing basic clerical tasks. Altes and Illinois Dep't of Employment Security, 50 Ill. HRC Rep. 3 (1989). In this instance, there is no indication that the copies requested were made by someone outside counsel's office or that such costs are routinely billed to counsel's clients. Such matters are generally considered part of a law firm's overhead and are not compensable. Kaiser v. MEPC American Properties, Inc., 164 Ill.App.3d 978,

518 N.E.2d 424 (1<sup>st</sup> Dist. 1987). Postage and letters are also considered part of a firm's overhead and are not compensable. Kaiser, *supra*. In addition, the Commission has previously held that attorney travel time, copying, postage, and miscellaneous expenses are not appropriate for reimbursement because unless there is evidence that these costs are routinely billed to fee-paying clients, it is presumed that those expenses were incorporated into the attorney's hourly fee. Maddox and Saint Paul Federal Bank, Ill. HRC Rep. , Charge No.. 1985CF2644 (August 20, 1993). Therefore, I find that Complainant's counsel is not entitled to the requested amount of \$352.00 for costs.

### **Recommendation**

Based upon the foregoing, it is recommended that the Commission order that:

- A. Respondent pay Complainant \$58,176.00 for attorneys' fees for Attorneys Michael K. Havrilesko and David N. Rechenberg;
- B. Complainant is not entitled to any award for costs;
- C. Complainant receive all other relief recommended in the Recommended Liability Determination.
- D. Respondents pay Complainant prejudgment interest at the rate and manner as set forth in Section 8A-104(J) of the Human Rights Act (775 ILCS 8A-104(J));

HUMAN RIGHTS COMMISSION

BY:

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NELSON E. PEREZ  
Administrative Law Judge  
Administrative Law Section

ENTERED: June 25, 2003